

FOCUS

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WORKERS' COMPENSATION NEWS

Volume II,
Issue #1

1996

Make Safety and Health Your Goal in 1996

DANGER**in the
Workplace**

Few people realize that lost work days from occupational injuries and illnesses cost Montana workers more than \$8 million in lost wages and nearly 500 worker-years of lost productivity each year. In 1993, according to the Department of Labor and Industry's publication Occupational Illness and Injuries, the latest year for which data is available, an estimated 17,900 Montana workers suffered a non-fatal occupational injury or disease. About 6400 of these caused employees to lose days of work or caused them days of restricted activity, in addition to the pain and suffering of both the employee and their

family during any occupational injury or illness.

During 1993, in Montana, there were 9.2 cases of non-fatal accidents or illnesses for every 100 full-time workers - a 9.2 incidence rate. Nationally, that figure is 8.5 cases for every 100 full-time workers. Since the trend is steadily upward, it's a good guess that 1994 and 1995 fared no better.

Industries - the Best and the Worst

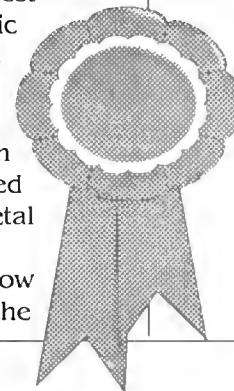
THE BEST - Finance, insurance and real estate (FIRE) led all industries as the safest place to work with an incidence rate of 2.9. Transportation, communications and public utilities (TCPU) was second at 7.4 and mining was third at 8.1. The mining industry's lower than average incidence rate stands out because this is an inherently dangerous industry. This is due to strict state and federal mine safety laws, continuous enforcement by both state and federal mine safety officials and aggressive safety and health plans instituted by companies in this industry. Oil and gas field services, not covered by federal and state mining safety laws, had a rate of 12.6 while coal mining and metal mining had rates of 4.0 and 7.6 respectively.

Wholesale trade, retail trade and services all have incidence rates near or below the average for Montana at 8.2, 8.4 and 8.9. Services, while their rate is average, had the largest number of injuries of any industry at 5100, followed closely by retail trade at 4200. The low rate is because of the large number of employees in these fields.

THE WORST - The Construction industry as a whole, ranked highest of all industries in Montana with a rate of 16.3 cases per 100 full-time workers, was the most dangerous industry in which to work. The Construction industry in Montana was 4.1 points higher than the national average of 12.2 cases. Manufacturing scored second with 14.6 and agriculture was third with 12.1. Manufacturing as a group continued a five year decline, peaking at 21 cases per 100 full-time workers in 1988. Unfortunately, durable goods manufacturing, which includes logging, lumber, and primary metals, as part of the construction industry, had a rate of 18.3 injury and illnesses per 100 full-time workers. Rates for nondurable

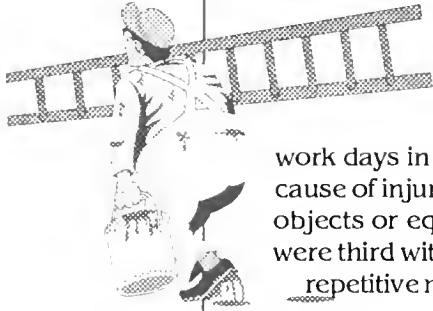
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goods manufacturing were considerably better at 8.7 cases per 100 full-time workers. Again, the rate for manufacturing was higher than the national average by 2.5 points.

How they were hurt or sick and why Characteristics of workers that suffered occupational injuries and illnesses

Sprains and strains accounted for 49% of the 5679 cases involving lost work days in 1993. Back injuries were most common, with overexertion the most common cause of injury. Back injuries accounted for 1893, or 32%, of the cases reported. Contact with objects or equipment was the second most common cause of injury. Falls of various kinds were third with 1080 cases. The balance amounted to exposure to harmful substances, 325, repetitive motion, 241, transportation accidents, 118, and assaults/violence at 122.

Fatalities

No employer wants to go to the family of one of their employees with the news of a fatal workplace accident. Yet, in 1994, according to the Department of Labor and Industry's Census of Fatal Occupational Injuries, 50 Montanans died at work. This is up from 38 in 1993. Four women and 46 men were fatally injured in 1994. This translates to 12 fatalities per 100,000 workers in Montana compared to 5 per 100,000 workers nationally.

Contacts with objects or equipment lead the list of causes with 12 cases, followed by 9 aircraft accidents, 8 highway accidents, 6 homicides, 5 falls, and exposure to harmful substances or environments along with non-highway accidents with 4 each.

Agriculture, construction, TCPU (transportation, communications and public utilities), and services, in that order, had the most fatalities. No industry, including government escaped without at least one.

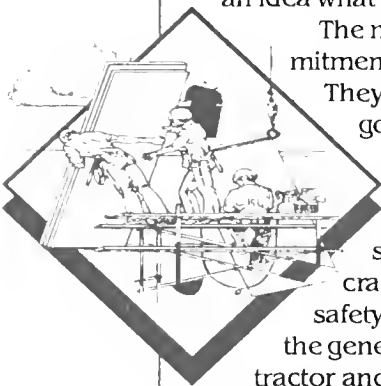
Violence in the workplace has become an important safety issue in today's workplace. Nationally, homicide is the second leading cause of death resulting from job-related injuries. In Montana, homicide was fourth.

Okay, I've got a problem. How do I fix it?

Be proactive. Implement a good safety and health program. The following examples give you an idea what some companies have done to "fix" the problem.

The management at **LPR Construction**, a large steel erection contractor, made a commitment that if they couldn't do the job safely, they were going to get out of the business.

They "never again wanted to talk to the widow of one of their employees". This meant going to 100% tie off fall protection, unheard of in the steel erection business and scoffed at by the steel erection workers who "worked high" and courted danger every day. LPR wrote a formal safety and health program, formed safety committees and convinced employees to try 100% tie off, designed a cable tie off system that could be installed on each beam before it was lifted into place by the crane, demanded accountability from supervisors and managers and eventually made safety and 100% tie off a condition of employment. Management sold the new system to the general contractors they worked for by guaranteeing they would be the safety subcontractor and the general wouldn't have to worry about OSHA inspections. LPR Construction completed the new Coors Field stadium in Denver with no fatalities and no lost time accidents in spite of four potentially fatal falls that were arrested by the new tie off system. From 1991 to 1995,



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workers' compensation rates dropped from \$77.00 per \$100 of payroll to \$36.00 per \$100 of payroll.

Schlage Lock Company realized in 1991 that, with \$2.9 million in workers' compensation costs and a high lost work day rate, something had to change. Their biggest problem was ergonomics. Manufacturing locks required staff to sit for long periods of time, and to perform a number of difficult arm and hand motions. In 1991, workers had 5,263 lost work days, mostly due to repetitive motion injuries.

In 1991, workers had 5,263 lost work days mostly due to repetitive motion injuries.

That same year the company instituted a new safety and health program that included management's commitment to reduce the number of injuries and the associated costs.

Management asked employees to help by forming safety committees and analyzing how they did their jobs. Using the suggestions of employees and outside ergonomic consultants, Schlage revamped their entire production line. The result?

By 1994, their lost time incident rate was cut in half, workers' compensation costs dropped from \$2.9 million to \$200,000, and lost work days fell to 1,437 from 5,263. Much to management's surprise, safety and health programs also resulted in a substantial increase in productivity. In 1991, the production line was able to produce 1224 locks/day using ten people. By 1995, the same number of locks were being produced by a production line of only six.

In Montana, 1995 Governor's Safety Award winner, **The Village Health Center** in Missoula, MT reduced their workers' compensation liability from \$2,200,000 in 1991 to \$6138 in 1994 as a result of management commitment and employee involvement. Village Health Center continues to improve, and during the first six months of 1995 their liability was an amazing \$1,949.02. During the same time period the number of lost time accidents declined to zero.

Mountain Water Company, also of Missoula, long an advocate of safety and also a 1995 winner of the Governor's Safety Award, has written safety and health programs and has an active safety committee. Mountain Water's safety committee has helped the company win many safety awards, not the least of which was the American Water Works Association's President's Gold Performance Award to Management and Employees for reducing disability injury frequency rate by 75% over the last three years. Mountain Water has adopted a "total quality" approach to management policy, including safety. A member of the safety committee can shut down a job if safety violations are detected.

The Village Health Center in Missoula reduced their workers' comp liability from \$2,200,000 in 1991 to \$6,138 in 1994.

The City of Billings, also a 1995 Governor's Safety Award Winner, has as the core of its safety and health program an "Accident Prevention Program" that identifies City policies and outlines specific work practices that includes addressing hazards unique to specific job assignments. Training is an important part along with employee involvement, accident investigation, monitoring workplace conditions and employee behavior. During 1994, the City of Billings created the position of Safety and Environmental Compliance Officer to consolidate safety and health programs and provide technical assistance to City departments. Responsibility and accountability for safety and health are assigned to all employees.

Custer County, long proactive in the area of safety and health, and winner of the 1995 Governor's Safety Award, has an active safety committee, has written safety and health programs

and has strong support from the County Commissioners. The County's new employee orientation procedure provides all employees with a thorough review of the safety and health program. This program familiarizes new employees with the County's existing safety and health policies and procedures, and the employee's responsibilities. Custer County's accident frequency has dropped dramatically each year from 1991 forward and in the last year they had no lost time accidents or job related illnesses.



Montana's Safety Culture Act

In 1993, Montana's legislature, recognizing the need for a change in how we addressed safety in the workplace, passed the Safety Culture Act that, in essence, required every employer in Montana to establish, implement and maintain an education based training program. This means:

- ✍ providing each new employee with a general safety orientation containing information common to all employees and appropriate to the business operations, before they begin their regular job duties.
- ✍ job or task specific training before they perform jobs or tasks without direct supervision.
- ✍ continuing regular refresher safety training.
- ✍ a system for the employer and their employees to develop an awareness and appreciation of safety through newsletters, periodic safety meetings, posters and safety incentive programs.
- ✍ providing periodic self-inspection for hazard assessment.
- ✍ documenting the above.

Employers with five or more employees are to have a comprehensive and effective safety program including the above six mandatory elements and additionally:

- ✍ policies and procedures that assign specific safety responsibilities and safety performance accountability.
- ✍ procedures for reporting, investigating and taking corrective action on all work-related incidents, accidents, injuries, illnesses, and known unsafe work conditions or practices.
- ✍ a safety committee composed of employee and employer representatives.

WHAT DOES A GOOD SAFETY AND HEALTH PROGRAM CONSIST OF???

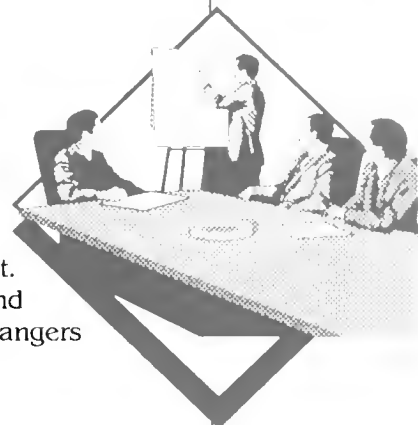
Safety and health professionals agree on the basic components, which are outlined for you below. The single factor that stands out in each of the employer stories above is the development of effective safety and health programs. These programs are usually in writing, though they don't have to be in the case of a fairly small employer. Here's what a good safety and health program should include:

Management Commitment and Employee Participation

1. Management Commitment - A strong commitment by management is essential to the success of any safety and health program. Management should:

- ✍ clearly state their commitment
- ✍ have clear goals
- ✍ make their commitment visible
- ✍ encourage employee involvement
- ✍ assign and communicate responsibility
- ✍ provide adequate authority and resources
- ✍ hold employees accountable
- ✍ review and evaluate operations at least annually

2. Employee Participation - in every case, a reduction in accidents and illnesses in the workplace can be traced to active and effective employee involvement. Safety Committees are a good avenue to promote safety in the workplace and obtain employee buy-in. In most cases, employees are more aware of the dangers of their jobs than management.

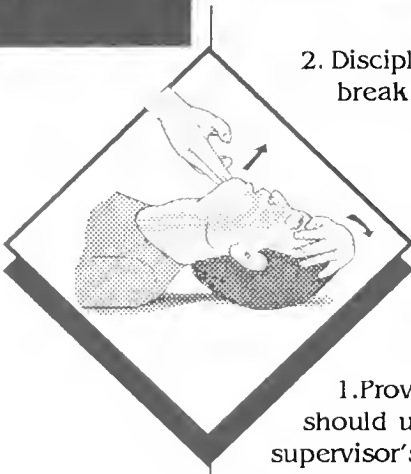


Proactive Workplace Analysis

1. Proactive Workplace Analysis includes surveying and identifying hazardous work areas or duties and developing methods and procedures to minimize the risk. To eliminate potential hazards:
 - ✍ do baseline and periodic safety and health inspections
 - ✍ analyze planned and new facilities
 - ✍ perform routine job hazard analysis
2. Provide regular site safety and health inspections by an outside source. Outside consultants are good for this or in some cases the Department of Labor, Safety Bureau or your Worker's Compensation Insurer can provide these services.
3. Provide a reliable system for employees, without fear of reprisal, to notify management about hazardous conditions and to receive a timely reply.
4. Provide for accident investigation and a thorough analysis of accidents that almost happened and accidents in which someone was almost injured.
5. Analyze your accident and illness history over time and develop a plan to reduce your lost workday incidence rate to zero. Compare your company's lost workday incidence rate to others in the same industry.

Hazard Control and Emergency Response

1. Hazard Control - Hazards can be eliminated through engineering controls, administrative controls and as an additional precaution, by using personal protective equipment. It's important that management is quick to identify hazards and to provide the necessary resources to eliminate the risk. A preventive maintenance plan for equipment and facilities will eliminate risks associated with faulty equipment.



2. Disciplinary action or reorientation should be in place for supervisors or employees who break the rules or disregard work or emergency procedures.
3. Emergency Response - Plan for emergencies and develop an action plan which includes evacuation, identifying the location of employees in an emergency situation, and the support of outside resources such as police, fire and medical facilities. Provide first aid and CPR training to all employees.

Safety and Health Training and Education

1. Provide employees with training on the hazardous aspects of their job. Supervisors should understand the hazards associated with a job, their potential effects, and the supervisor's role in ensuring that employees follow the rules, procedures and work practices for controlling exposure to them.
2. Employees should be taught hazards and safe work procedures to protect themselves at the same time they are taught to do a job. Safety training should be reinforced or repeated as often as necessary.
3. Where personal protective equipment is required, employees should know when, why, and how to use it, and should understand the equipment's limitations and maintenance.

Workers' Compensation Regional Conference

July 7-10, 1996 - Grouse Mountain Lodge

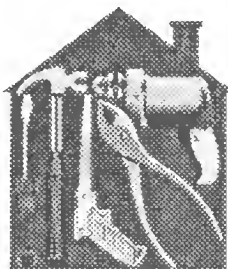
Montana is proud to host the annual Western Association of Workers' Compensation Boards conference this year at the beautiful Grouse Mountain Lodge in Whitefish, Montana. What could be better than a great summer trip to one of the most beautiful spots in the country centered around a stimulating professional conference? The conference includes a banquet dinner at the Montana Grill followed by a cruise on Flathead Lake.

The agenda offers a variety of excellent topics presented by top-notch speakers from around the nation. John Burton, author of the *Workers' Compensation Monitor*, is one of the keynote speakers. Brian Boon, director of the Alberta Rehabilitation Center in Canada, will share his personal experiences with total quality management in a workers' compensation program. Some other highlights include panel discussions on physiological barriers, alternative dispute resolution, exclusive remedy and "going bare". Violence in the workplace will be addressed by Rick Miller of Baltimore, Maryland and Dr. Dana Hedapol will speak on occupational disease and epidemiology.

We hope you'll join us for this exciting and informative conference. Registration packets will be in the mail soon, or, if you'd like to register early, complete the form on page 16 of the newsletter and send to: Raini Williams, Employment Relations Division, P.O. Box 8011, Helena, MT 59624. For more information, you can reach Raini at (406) 444-1574. See you there!

If you're interested in being an exhibitor at the conference, call Keith Messmer at (406) 444-7710. To sponsor a conference event call Maggie Connor at (406) 444-6532.

New Law Affects Construction Industry





On October 1, 1995, new laws took effect regarding the construction industry and affecting independent contractors in all industries.

Construction Industry Contractors

Senate Bill 354 established a new construction contractor registration program. Under the new program all construction contractors register with the Employment Relations Division, Department of Labor and Industry, verifying they are in compliance with Montana employment laws, by July 1, 1996.

Objectives of the law:

The legislation was proposed and supported by the construction industry to:

-  provide a fairer competitive environment;
-  provide the public and the industry with a much greater level of protection from liability; and,

The liability issue is of primary importance to those who hire the services of contractors. Under laws that have been on the books for many years, persons who hire contractors to perform work have been liable if the contractor failed to provide workers' compensation coverage, unemployment insurance coverage, and the payment of wages due to the contractor's employees. Under the new law, persons who hire registered construction contractors are protected from this liability.

Effective October 1, 1995, contractors who wish to preserve their rights to file an action in any court in the state and to file liens must be registered. Effective July 1, 1996, contractors must be registered in order to advertise to perform work, offer to perform work, or to perform

work. Penalties can be assessed to unregistered contractors and in some cases restraining orders can be issued to stop work on a project until the contractor(s) are registered.

To register, contractors will complete an application form, furnish a security deposit based on their average monthly payroll, and provide evidence of compliance with all state laws, especially the workers' compensation and unemployment coverage requirements. The registration fee is \$80.00 and is renewed annually.

If you need additional information, or if you have questions, please call the Contractor Registration Unit in the Employment Relations Division at 444-7734, or write to Box 8011, Helena, Montana, 59624-8011.



The public and the industry can verify if a construction contractor is properly registered by calling toll-free 1-800-556-6694.

New Simplified Process for Independent Contractors

Beginning December, 1995, the Department replaced the independent contractor application process with a new, simplified one-page application affidavit form. The new process requires the applicant to submit only the application affidavit. Generally, no additional documentation will be needed.

Effective October 1, 1995, a new law (contained in SB354) requires IC's to have the official exemption from the Department of Labor and Industry to be exempt from workers' compensation coverage requirements. Because of this change, the Department has made the exemption process simpler, easier, and faster for applicants.

The new application affidavit form requires the applicant to affirm he or she, when acting as an independent contractor, has con-

a

trol over the work; furnishes the tools, equipment or knowledge necessary to complete the work; will file state and federal taxes, if due, as a business; has documents which support the independent contractor status; and otherwise fulfills the criteria to meet the definition of an independent contractor. The applicant signs the application in the presence of a notary.

The new application affidavit form contains information the employer and the applicant should know about the exemption status. It also explains the penalties for making false statements and misrepresentations to get or use the exemption.

b

New Independent Contractor Exemption Certificate

The Department has replaced the approval letter previously sent to applicants with a new exemption certificate. The new exemption certificate contains the independent contractor's name, the occupation(s) for which the exemption is granted, and the effective dates of the exemption. The certificate also contains educational information for the independent contractor and for the users of the independent contractor's services. The certificate is designed so the independent contractor, if they choose, can photocopy the certificate and provide each entity utilizing their services a copy of the certificate with the information pertinent to that entity.

The approval letters previously issued to current independent contractors will remain valid until renewed on their anniversary date.

c

Reason for Changes

These changes have been made in response to changes in law enacted by the 1995 legislative session. Effective October 1, 1995 a new part "c" was added to the definition of an independent contractor in workers' compensation law. Part "c" requires an independent contractor to hold an official exemption from the Department of Labor and Industry to meet the definition of an independent contractor.

Since 1983, under workers' compensation law, an independent contractor has been required to either purchase workers' compensation insurance for themselves or to hold an exemption. Many independent contractors were apparently unaware of this requirement until it was also added into the IC definition. This change in law does not make anyone an independent contractor who was not an independent contractor before the change. It simply means independent contractors must now have an official exemption.

Who Should Have the Independent Contractor Exemption?

The Department has developed the following guidelines to help businesses determine when to require an exemption.

☑ The independent contractor exemption from the coverage requirements of the Workers' Compensation Act is available only to individuals, not to business entities such as corporations or partnerships. The independent contractor exemption relieves the person holding the independent contractor exemption from having to be personally covered by workers' compensation.

☑ The independent contractor exemption does not relieve the owner(s) of a business from having to provide workers' compensation coverage for all employees of the business.

✓ Anyone who wants an independent contractor exemption and meets the requirements for having an independent contractor exemption may obtain one.

As used here, "owner(s)" means a sole proprietor, working member of a partnership, or working member of a member-managed limited liability company. The following owners of business operations **do not** generally need to obtain the independent contractor exemption provided in 39-71-401(3), MCA:

✓ Any owner who is covered by a workers' compensation insurance policy for the work performed;

✓ Owners who provide services to the public from a fixed, regular business location; and

✓ Owners who practice professions such as medicine, law and accounting who provide their own business location but may periodically need to serve their customers at the customer's location.

The following owners generally **do** need to obtain the independent contractor exemption provided in 39-71-401(3), MCA:

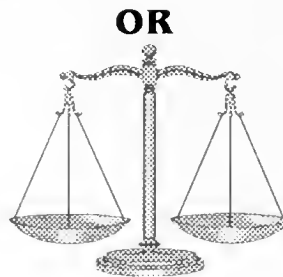
✓ Any owner who represents themselves to the public as an independent contractor, regardless of whether the owner has any other employees;

✓ A sole proprietor, working member of a partnership, or a working member of a member-managed limited liability company of a business, where the individual primarily provides personal services for commercial customers at the customer's place of business or, where the services provided are integral to the customer's business operations.

Remember, if you are hiring an entity or individual in another field, make sure they have either a workers' compensation policy or an independent contractor exemption. Contractors and other individuals who hold the independent contractor exemption have the paperwork to prove it.

If you need more information or have questions about the new process and the new forms, or to verify independent contractor status, please contact the Workers' Compensation Insurance Compliance Section at **444-7734** or write to P.O. Box 8011, Helena, Montana 59604-8011.

**Please keep in mind these are
simply guidelines, each situation is unique.**

**EMPLOYMENT
RELATIONS
DIVISION****OR
STATE
COMPENSATION
INSURANCE
FUND?****Who Does What?**

The Employment Relations Division (ERD), under the Department of Labor and Industry, is responsible for the regulatory functions of workers' compensation; safety, insurance compliance, medical regulations and claims. The State Compensation Insurance Fund (SCIF) insures employers for workers' compensation insurance coverage.

The confusion began when the 1989 Legislature reorganized the Division of Workers' Compensation into two totally separate entities, the Insurance Compliance Bureau, now ERD, and SCIF. To avoid adding to the confusion, let me give you a brief history of the development of these two entities.

The first compensation act was passed in Montana in 1915 and was the responsibility of the Industrial Accident Board (IAB). The members of the IAB, appointed by the Governor, consisted of the commissioner of labor and industry, the director of the bureau of vocational rehabilitation and one member appointed by the governor with the consent of the senate. At that time there were three insurance plans available; self-insurance, private insurance and the State Fund. This no-fault insurance was created to provide medical and wage loss benefits to the majority of injured workers in Montana.

In 1973, the Legislature provided the broad mandatory coverage of the present Workers' Compensation Act and created the Division of Workers' Compensation, which administered the laws relating to industrial safety as well as the statutes addressing benefits to workers suffering from industrial injuries.

The agency was divided into four major bureaus; Administrative Support, State Insurance Fund, Insurance Compliance and Safety. The executive and legal offices provided administrative and legal support to the entire Division. The mission of the Workers' Compensation Division consisted of three parts:

- ① Assisting employers' prevention of accidents and occupational disease,
- ② Ensuring compensation to offset wage loss and medical costs due to accident, occupational disease and crime,
- ③ Encouraging the retraining of workers who need to learn new work skills to overcome incapacities caused by accident or disease in the workplace.

As the Legislature continued to make sweeping changes in the Workers' Compensation and Occupational Disease Acts, the roles within the Division of Workers' Compensation began to change and become more defined. The State Fund continued as an "insurer" providing low premiums to Montana's employers and writing most of the policies for workers' compensation coverage in the state. Since there also was coverage by private insurance companies and self-insured groups, the Insurance Compliance Bureau's role as the "regulatory agency" for workers' compensation broadened. It became clear as the laws changed and required more individuals with expertise in workers' compensation and occupational disease regulation and education responsibilities, that there needed to be a definitive role created in the workers' compensation forum with that mission. There was also the question of conflict of

interest in having the regulatory part of workers' compensation (Insurance Compliance) and the insurance portion (State Fund) combined.

In the 1989 legislative session, one of the most significant changes in the organization of state agencies was mandated. The Division of Workers' Compensation was reorganized into two totally separate entities—the State Compensation Insurance Fund, which would continue to do business as an insurer of workers' compensation benefits, and the Insurance Compliance Bureau, now the Employment Relations Division, under the Department of Labor and Industry, which would be responsible for the regulatory functions of workers' compensation; safety; insurance compliance; medical regulations and claims. It was at this time confusion began, since previously all business had been taken care of by the Division of Workers' Compensation. The Employment Relations Division was also physically moved to the Beck Building, although the Peg Condon Building continued to say "Division of Workers' Compensation" on the outside wall viewed by the public and customers alike. So, the Employment Relations Division (ERD) began a campaign to educate the public of its new role in the workers' compensation arena.

It hasn't been easy. Many of the responsibilities of ERD and SCIF seem similar to the public. Although each agency provides varied services for their customers, they are controlled by the same statutes. This creates the impression they are a single entity. The words "workers' compensation" appear on numerous forms used by both agencies.

To put it simply, the difference is, the State Compensation Insurance Fund insures employers for workers' compensation coverage and the Employment Relations Division regulates all insurers, including the State Fund, under the Workers' Compensation and Occupational Disease Acts. As we continue to educate injured workers, medical providers, attorneys and employers, the relationship between ERD and SCIF becomes more clearly defined with those individuals receiving the suitable service from the appropriate agency.



Left to Right: Judie Lowney (DLI), Deby Daniels, Christann Schmid, Jennifer Stewart, Jon Hardwick (DLI)

Liberty Northwest Wins 1995 Quality in Reporting Award

The new Montana Workers' Compensation Database is dependant on accurate data in order to produce accurate reports as mandated by the Montana Legislature. The Employment Relations Division will present an award each year to the firm who provides top quality reports on a timely basis. Liberty Northwest, a Montana Workers' Compensation insurance company is this year's recipient. They have consistently provided timely and accurate information when submitting reports to the Employment Relations Division.

Liberty Continued on Page 12

Liberty Continued from Page 11

Other Montana Workers' Compensation firms that were in the running for this award were: **Montana Loggers' Exchange, Putnam and Associates, Safeco, Valor, Travelers', and Louisiana Pacific.** Our thanks and appreciation goes to all of you who have worked diligently to make sure your reports are accurate, timely, and complete.

First Report of Injury Revised

The First Report of Injury - ERD 991, revised 9/95, is the initial information received by the Employment Relations Division when there is an on the job injury. Accuracy in completing this form is the beginning of accurate statistics from our Workers' Compensation Database. Please use the current form when reporting a worker's injury. You may obtain these revised forms from your Workers' Compensation insurance adjuster. Some boxes have heavy lines. This means these must be completed for us to enter your First Report in our database. The other information is used by your Workers' Compensation Insurance company to process the claim.

First Report of Injury report training for employers and employees is available your Montana Workers' Compensation Insurance adjusting firm. Completing these forms accurately helps speed the processing of Workers' Compensation claims, which is a benefit to all of us.

GOVERNOR'S SAFETY AWARD WINNERS

Commissioner of Labor, Laurie Ekanger, announced the winners of the 1995 Governor's Awards for Safety. The Governor and the Department of Labor and Industry annually recognize employers who have made outstanding achievements in safety and for their personal contribution to the improving of safety and health in Montana workplaces. "These employers have demonstrated a personal commitment to safety," Ekanger said, "and have established initiatives in updating quality safety programs in their individual companies."

This year's winners were the **City of Billings, Custer County, the Village Health Care Center in Missoula and the Mountain Water Company in Missoula.**

The awards were presented at the Governor's Conference on Safety and Workers' Compensation held at Big Sky September 20-22. Each award recipient received a plaque and were recognized for their individual accomplishments.

"The Governor's Awards are Montana's highest honors given to employers in both the public and private sectors for excellence in improving safety and health in the workplace," Commissioner Ekanger stated. They are designed to recognize the commitment made to ongoing



Left to Right: John Maloney, Safety Bureau, Kay Jennings, The Village Health Center, Billings, Roy Hughes, Mountain Water Company, Missoula, Don Rebal, City of Billings, Laurie Ekanger, Commissioner of Labor (Custer County representative missing)

ing safety programs, involvement of employees in the development of the in-house safety plan and efforts made to enhance programs by seeking advice and assistance of qualified professionals at the state and federal level.

Award winners are annually nominated by labor unions, trade associations and other entities. The nominees are independently evaluated and rated by a panel of safety professionals who follow a objective method of evaluating safety programs and records.

Medical Provider Update

Satellites to Managed Care Organizations

After meeting with managed care organizations around Montana, there seems to be a common concern relating to the definition of satellite facilities. Hopefully, these questions and answers will address those concerns.



How close must a satellite be to the parent organization (MCO)?

24.29.2301 ARM (2) states in part, "In order to expand the areas served by the MCO, the use of satellite office locations providing medical services to injured workers is encouraged". The key to this is specialized services must still be provided by the MCO. It can therefore be concluded that satellites must be within the 30/100 miles radius of service or within the NORMAL REFERRAL PATTERN of the parent facility. There may be instances where the normal referral patterns fall slightly outside of the 100 mile range. This would in fact extend the MCO's area of coverage by the distance to the satellite within the normal referral pattern. If there is another MCO located within the area of the satellite then that MCO would have preference. Satellite locations are intended to increase an MCO's ability to provide accessible quality care to injured workers in remote areas and not to facilitate territory infringement.

The Department recognizes the eastern part of Montana will require a separate understanding of NORMAL REFERRAL PATTERNS. The more remote areas may have to be a series of satellite facilities or preferred providers providing as much primary care as can be ex-

pected within the injured worker's community. The insurer will have the ability to evaluate the appropriateness of care and direct the care of the injured worker. If the MCO located within the normal referral pattern to these remote locations wishes to negotiate a service contract with the facility as a satellite of the MCO then these will be considered on a case by case basis by the Department.



Must a satellite maintain a full panel of providers?

A satellite facility is considered to be a remote location within the area of service of a MCO. The satellite does not require a full panel of providers as long as: a) there are no other full MCOs in the same community; b) the satellite facility is utilizing the provider services of the parent MCO; c) the referral process would be to the parent MCO community for all patients.



If a MCO has a full panel of providers and facilities in a location remote from the parent MCO's area of service is it a stand alone MCO?

Yes, and it must be certified as a stand alone MCO. The Department will consider this a secondary MCO of the parent organization.



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If the parent MCO is certified, do any secondary MCOs have to certify?

Yes, a MCO must be certified to operate in the state of Montana. For a MCO to be considered for selection by the injured worker according to MCA 39-71-1103 (3) the MCO must be certified and contracting with that insurer. A satellite is not considered a MCO for this selection purpose.

If the secondary MCOs have to certify, are they required to pay another application fee?

If the secondary MCO is utilizing the same administrative personnel as the parent with a separate provider panel and the plan of service is the same, then there is no need to pay an additional fee. If the secondary MCO has a different administrative staff and process then it will be considered separate and as such a new MCO requiring full certification including the fee.


If the parent MCO ceases to operate or loses certification, how does it affect the secondary MCO?

Any secondary MCOs affiliated with the parent must provide proof they are capable of operating without sponsorship of the parent MCO and may be required to file a new application and appropriate fees with the Department.


A General Medical Question

If a hospital becomes a Managed Care Organization, does the Hospital Rate Change Report still need to be submitted to the Department?

Yes. Hospitals can be paid for services to workers' compensation patients in either of the following ways.

 According to the fee schedule. Payment is based on the hospital discount factor, which is calculated from the Rate Change Reports sub-

mitted at the beginning of each budget year, or whenever a rate change occurs; or

 According to the contracted rate negotiated with a particular insurer. If the patient receives services performed under either a Managed Care Organization (MCO) or Preferred Provider Organization (PPO) contract, payment is based on the negotiated rate for specified services.

Only claims with dates of injury on July 1, 1993, or after are eligible to be referred to a MCO or PPO. The decision to refer a patient to a MCO or PPO is at the discretion of the insurer, provided the claim meets statutory conditions.

Just Another Week in Mediation

It's 9:00 a.m. and the week's first mediation conference has just begun. This is an "in-person" conference. The room is uncomfortably tense. The defense attorney, a slight, older man, has just announced that the 6'4", 250 lb. claimant sitting across from him is obviously faking his condition. This pronouncement ignores the fact the worker has undergone three back surgeries and now walks with a cane. In the shocked silence that follows, the mediator wonders whether the claimant will come across the table at the attorney or merely hit him with the cane.

This is just the first conference of the week; a conference which ends 90 minutes later with a resolution of the dispute and handshakes all around.

Down the hall a telephone conference is beginning. The issue is supposed to be the claimant's entitlement to continued chiropractic care. At the start of the conference, the claimant's attorney states he wants to settle the case. The defense attorney agrees to this issue change. The mediator, prepared for chiropractic maintenance versus therapeutic care issues, now leads a discussion of permanent total disability and social security offset rates. This case resolves two weeks later when the parties agree to a settlement based on figures discussed during the conference.

The highlight of Monday's third mediation occurs when the claimant denies the serious motor vehicle accident, which occurred six months after his industrial injury, has had any effect on his current cervical condition. The insurer has medical reports showing the claimant was "life-flighted" from the scene and hospitalized for six days with neck injuries received in the car accident. Thirty minutes into the conference it becomes clear the claimant has never told his attorney about the accident. The parties agree to pend the case so additional medical information can be obtained and so the claimant and his attorney can "chat".

Is this the start of an unusual week for the Mediation Unit? No, just business as usual. The 1987 Legislature mandated a non-binding mediation process for workers' compensation benefit disputes. Since then, mediators have become accustomed to the unexpected happening during the conferences. In fact, the conferences rarely turn out as planned, but that only makes their jobs more interesting.

Currently the mediation unit consists of six mediators, a legal secretary and an administrative aide. In fiscal year 1994, they processed more than 1,000 mediation petitions, an increase of 98% from four years ago. Their "known" resolution rate is approximately 80% and most of the unresolved cases have never been filed in the Workers' Compensation Court.

The issues handled range from 'acceptance or denial of a claim' to 'which insurer is liable for a claimed injury'? Rarely does a mediation petition list only one issue. For example, a petition filed to decide the claimant's entitlement to permanent total disability benefits will often include such side issues as the correct benefit rate, the social security offset rate, lump-sum settlement entitlement, rehabilitation issues and medical related issues.

As anyone handling workers' compensation claims knows, black and white issues are a scarcity. What one side thinks is a sure winner rarely appears that clear to the opposing side. It is the mediator's job to point out the strengths and weaknesses in the arguments of both sides. They also help place value on accepted and dis-

puted issues as well as point out the costs of resolving or not resolving a particular issue. Often, the insurer or claimant will have a strong case but must weigh the cost of litigating that issue instead of compromising the case. The mediator must acknowledge the role strict economics plays in workers' compensation disputes. Another factor to be considered is the time it will take to litigate an issue. The old adage "time is money" rings true in the workers' compensation arena. The mediator's charge is to help facilitate the exchange of information on these cases so an acceptable resolution can be reached.

To be effective the mediators must have extensive knowledge of the Workers' Compensation Act. Keeping the laws straight is a challenge in itself. Conversations in the mediation unit often start with the questions, "What is the date of injury?" or "What law are we talking about?"

Some of the most difficult conferences involve injured workers with multiple claims involving two or more laws. Often the mediator will be called on to calculate the value of the claim using several approaches and then to facilitate negotiations to resolve the issues. Often just plain old creativity is the necessary element in settling these disputes.

Not all issues can be compromised either. Many times the mediator will make a recommendation favoring one side or the other. However, they are careful to point out that they are not fact finders or judges. Mediators also ask the parties to consider the costs of not resolving the disputes at an informal level.

The mediator's goal is to help the parties solve their problems. While they recognize some issues must be litigated, they take pride in the proven effectiveness of their process, and in their ability to assist customers in settling so many issues which previously were taken to court.



WESTERN ASSOCIATION OF WORKERS' COMPENSATION BOARDS

Conference Registration

July 7-10, 1996 - Grouse Mountain Lodge - Whitefish, Montana

Name _____ Title _____

Representing _____

Address _____ Phone _____

Registration Fee: By June 1, 1996 - \$150 Member, \$175 - Non-Member

After June 1, 1996 - \$175 Member - \$200 Non-Member

Please enclose an additional \$75 for your spouse or companion, \$45 for children 12 and older and \$35 for children under 12.

Spouse/Companion Name _____

The host hotel for the '96 Conference is Grouse Mountain Lodge in Whitefish, Montana. Please make your lodging arrangements directly with the hotel by calling 1-800-321-8822 and referring to the WAWCB Conference. Rooms are limited so make your reservation early. The following rates are guaranteed if you reserve before June 1, 1996 and apply for the nights of July 6th through the 9th.

\$109 - single/double per night/standard room

\$149 - single/double per night/Fairway View, 3rd floor

\$159 single/double per night/Corner Suite

To receive a discount on air fare or car rental, call the Flathead Travel Service at 1-800-553-3400 and ask for Gina or Dee. Again, mention you're attending the WAWCB Conference.

If you need more information, please call Raini Williams at (404) 444-1574 or write the Employment Relations Division, P.O. Box 8011, Helena, MT 59624.

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